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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,448	12/28/2001	Tracee E.J. Eidenschink	29985/01-180	9310

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EXAMINER

GILBERT, ANDREW M

ART UNIT

PAPER NUMBER

3767

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,448

Applicant(s)

EIDENSCHINK, TRACEE E.J.

Examiner

Andrew M. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40, 52-55, 57, 58, 64-67, 69, 70, 76 and 77 is/are pending in the application.
- 4a) Of the above claim(s) 2-16, 18, 23-38, 40, 53-55, 58, 65-67, 70, 76 and 77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 17, 19-22, 39, 52, 57, 64 and 69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/30/2006 has been entered.

Acknowledgments

2. This office action is in response to the reply received on 6/30/2006.
3. In the reply claims 1, 18, 20, 35, 40, 52, 58, 64, and 70 have been amended.
4. Of the pending claims, claims 2-16, 18, 23-38, 40, 53-55, 58, 65-67, 70 and 76-77 have been previously withdrawn.
5. Thus, claims 1, 17, 19-22, 39, 52, 57, 64 and 69 are pending in this application.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 17, 19, 20, 21, 39, 52, 57, 64 and 69 are rejected under 35 U.S.C. 102(e) as being anticipated by Slater (6623448). Slater discloses a hypotube (24, Fig 2) having a hypotube (24) with a tubular shaft having a lumen (col 6, lns 54-65) and a main section integrally connected to a distal section (Fig 2; col 6, ln 65-col 7, ln 10), the distal section having a first section (Fig 2; col 6, ln 65-col 7, ln 10) connected to the main section (Fig 2; col 6, ln 65-col 7, ln 10) and a second section (Fig 2; col 6, ln 65-col 7, ln 10), the first section further having at least 1 slit (68) extending at least partially and circumferentially around the tubular wall in close proximity to the second section that comprises a non-tubular stinger (26) that is tapered (Fig 2) and formed by a portion of the tubular wall (Fig 2) by an elongated axial cut-out along the tubular wall (26, Fig 2; wherein the Examiner interprets that the formation of the needle tip constitutes an elongated axial cut out through a tubular wall to form a stinger, ie the needle tip – considered a non-tubular stinger because the needle tip lacks a lumen, with the remaining portion of the tubular wall).

8. Claims 1, 17, 19-21, 39, 52, 57, 64 and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Krause et al (5322505). Krause et al discloses a hypotube (12) with a tubular shaft having a lumen (Fig 1-3) and a main section integrally connected to a distal section (Fig 1-3), the distal section having a first section (Fig 1-3) connected to the main section (Fig 1-3) and a second section (Fig 1-3), the first section further having at least 1 slit (60, 62) extending at least partially and circumferentially around the tubular wall in close proximity to the second section that comprises a non-tubular stinger (30)

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that is tapered (30; Fig 3) and formed by a portion of the tubular wall (28; 30; Fig 3) by an elongated axial cut-out along the tubular wall (30, Fig 3).

9. Claims 1, 17, 64 and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Swanson (5743876). Swanson discloses a hypotube (21; col 5, Ins 32) with a tubular shaft having a lumen (Fig 7) and a main section integrally connected to a distal section (Fig 1, 7), the distal section having a first section (Fig 1, 7) connected to the main section (Fig 1, 7) and a second section (Fig 1, 7), the first section further having at least 1 slit (Fig 7) extending at least partially and circumferentially around the tubular wall in close proximity to the second section that comprises a non-tubular stinger (Fig 9; 230) that is tapered (230; Fig 9).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 19-22, 39, 52, 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson (5743876). Swanson discloses the invention substantially as claimed except for the second section comprising a non-tubular stinger formed by an elongated axial cut-out along the tubular wall. Swanson teaches in separate embodiments that it is known to have a solid hypotube (21) with an elongated cut-out in the axial direction along the tubular wall (Fig 12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the distal

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end of the hypotube, switching the elongated axial cut out along the tubular wall to form a non-tubular stinger instead of attaching the stinger wire (230) as taught by a separate embodiment of Swanson for the purpose of providing a unitary smooth transition from the proximal to distal end of the hypotube (col 8, ln 48-col 9, ln 11).

Response to Arguments

12. Applicant's arguments with respect to claims 1, 17, 19-22, 39, 52, 57, 64 and 69 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goodin et al (6066114); Samson et al (4998923); Miraki (5387193); Kumoyama et al (2006/0142696); Terumo Corp (JP-2001-095924).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Gilbert whose telephone number is (571) 272-7216. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrew Gilbert

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

